

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

WOODGLEN ESTATES ASSOCIATION,

Respondent,

v.

**DELLA JOAN DULANEY, CO-TRUSTEE THE DELLA JOAN DULANEY TRUST, et
al.,**

Appellant.

DOCKET NUMBER WD73123

Date: February 14, 2012

Appeal from:
Jackson County Circuit Court
The Honorable Michael W. Manners, Judge

Appellate Judges:
Division One: Victor C. Howard, PJ, Alok Ahuja and Karen King Mitchell, JJ

Attorneys:
Dennis J.C. Owens and Jonathan Sternberg, Kansas City, MO, for appellant.
Russel M. Nasteff, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

WOODGLEN ESTATES ASSOCIATION

Respondent,

v.

**DELLA JOAN DULANEY, CO-TRUSTEE THE DELLA JOAN DULANEY TRUST,
et al.,**

Appellant.

WD73123

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The Dulaney's own seventeen parcels of undeveloped land in the Woodglen Estates subdivision, which they acquired in March 1999. Prior to June 2006, the Dulaney's had not been billed by the Woodglen Estates Association for subdivision assessments. In June 2006, however, the Association notified the Dulaney's that they owed subdivision assessments dating back to March 1999, together with interest. The Dulaney's failed to pay, and the Association recorded liens on their properties.

The Association thereafter sued the Dulaney's for the unpaid assessments, interest, and its attorneys fees and costs, and for foreclosure of its liens. The case proceeded to a jury trial. After the close of the evidence, the circuit court granted the Association's motion for a directed verdict as to the Dulaney's liability. The jury awarded the Association \$54,500 in damages: \$50,000 for unpaid assessments, and \$4,500 in interest. The trial court added \$23,071.74 in attorney's fees, and \$3,269.31 in costs. The Dulaney's appeal, arguing that their undeveloped parcels are not subject to subdivision assessments, and that the Association failed to follow the procedures specified in the subdivision Declaration for establishing and collecting assessments.

AFFIRMED.

Division One Holds:

The Dulaney's argue that their properties are not subject to assessments because they are the successors-in-interest to the subdivision's developer, and property held by the developer is exempt from assessments. The rights of a subdivision developer are personal rights which do not run with the land. While the developer can assign its rights to others, it must manifest an intention to do so. Here, the Dulaney's acquired seventeen parcels formerly held by the developer; but those parcels passed through multiple intervening owners before the Dulaney's acquired title. No evidence in the record establishes an intention to transfer the developer's

rights in connection with each of the intervening transactions. The Dulaney's claim that they are successors-in-interest to the developer accordingly fails.

Even if the Dulaney's held the developers' rights, the subdivision Declaration does not exempt the developer's property from assessments. The assessment provisions of the Declaration make both improved and unimproved parcels subject to assessments, and are written broadly enough to comprehend property held by the developer. There is no presumption under Missouri law that a developer's property is exempt from subdivision assessments. Instead, such an exemption must be clearly stated in the subdivision's covenants. Because no such exemption is stated here, the developer's property is subject to assessment to the same extent as other similar property.

The Dulaney's also argue that the Association failed to follow the procedures specified in the Declaration for establishing and collecting assessments. But two of their procedural arguments – that the Association's annual budgets failed to establish assessments for the Dulaney's properties, and that the Dulaney's were not given notice of meetings at which assessment increases were adopted – were not raised in the trial court in opposition to the Association's directed verdict motion, and are therefore not properly preserved. Further, those procedural arguments go to damages, not liability, since the Declaration itself sets a base assessment rate to which the Dulaney's would be subject, even if assessment *increases* were not properly adopted. Finally, although the Dulaney's argue that the Association failed to satisfy a condition precedent before seeking foreclosure on its liens, that argument is irrelevant, because the circuit court's judgment only awarded money damages, not lien foreclosure.

Before: Division One: Victor C. Howard, PJ, Alok Ahuja and Karen King Mitchell, JJ

Opinion by: Alok Ahuja, Judge

February 14, 2012

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